

## REMARKS

By the foregoing amendment, claims 71 and 72 have been added. No new matter has been added.

The Kohler reference discloses an antiserum which contains a mixture of antibodies having multiple specificities against the *Listeria* protein. The antiserum is prepared by injecting a rabbit with the intact p60 protein (Kohler reference, page 1944, second column). By contrast, applicant's invention is related to antibodies which can specifically binds only epitopes within a discreet set of p60 peptides (SEQ ID NO:17, 20, 26, 29, 30 or 31). Moreover, applicants have demonstrated that their antibodies can be successfully used to react with and identify *Listeria monocytogenes*, the pathogenic species of *Listeria* bacteria and are not cross-reactive with other *Listeria* species (see e.g., the Declaration of Dr. Shubert dated March 27, 1995 which was submitted with a previous response (February 25, 2002) which shows that an antibody generated against the peptide SEQ ID NO:42, which is a form of SEQ ID NO:29, is specific for *L. monocytogenes* as it does not react with five other non-pathogenic species of *Listeria* in a microtiter immunoassay). Kohler does not disclose any of the antibodies of the instant invention which are directed to the aforementioned peptides. Kohler only discloses that the polyclonal antiserum can be used to react with a genetically engineered *E. coli* clone expressing the p60 protein and culture supernatant proteins of *L. monocytogenes* (see e.g., figure 1 of Kohler). Also, the antibodies produced according to Kohler are not specific for *Listeria monocytogenes* as evidenced by the paper of Bubert et al. at page 3120, second column (previously submitted with the response filed on June 11, 2001). Nothing in the Kohler reference would lead one of skill in the art inexorably to any of the claimed isolated antibodies. Therefore, there can be no rejection based on anticipation under §102(b) of the patent statute.

The combination of Kohler with Lerner provides at most a suggestion to try immunizing with a multitude of peptides found within the *L. monocytogenes*-specific p60 polypeptide sequences.

It clearly does not provide the teaching or motivation to use the specific peptides of applicants' invention to obtain isolated antibodies which are specific for *L. monocytogenes* nor does it provide a reasonable expectation of success. Thus, the combination of references in no way renders the instant claims obvious, *In re Vaeck* 20 USPQ 2d 1438 (Fed. Cir. 1991). Moreover, applicant's data clearly shows that only a certain subset of peptides derived from the p60 protein have use for generating antibodies which are in fact specific for detection of *L. monocytogenes* (see e.g., specification at page 11, lines 5-10). There is clearly no prima facie case of obviousness in the combination of Kohler with Lerner or any other reference which discloses protocols for making antibodies, polyclonal or monoclonal. Therefore, rejection of the claims based on obviousness under §103 of the patent statute is without a proper legal basis and should be withdrawn.

Claims 42 and 43 were amended as suggested by the Examiner in the response filed on January 30, 2003. The Advisory Action dated May 30, 2003 indicates that the amendments to claims 42 and 43 have overcome the § 112, second paragraph, rejection. Applicants believe the same amendments to claims 42 and 43 also overcome all other outstanding issues and place this case in condition for allowance.

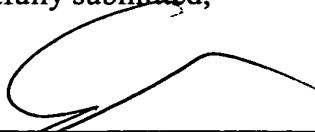
In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned attorney or agent concerning such questions so that prosecution of this application may be expedited.

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The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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